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No. 704

In the Supreme Court of the United States

OCTOBER TERM, 1948

ANTHONY LINQUATA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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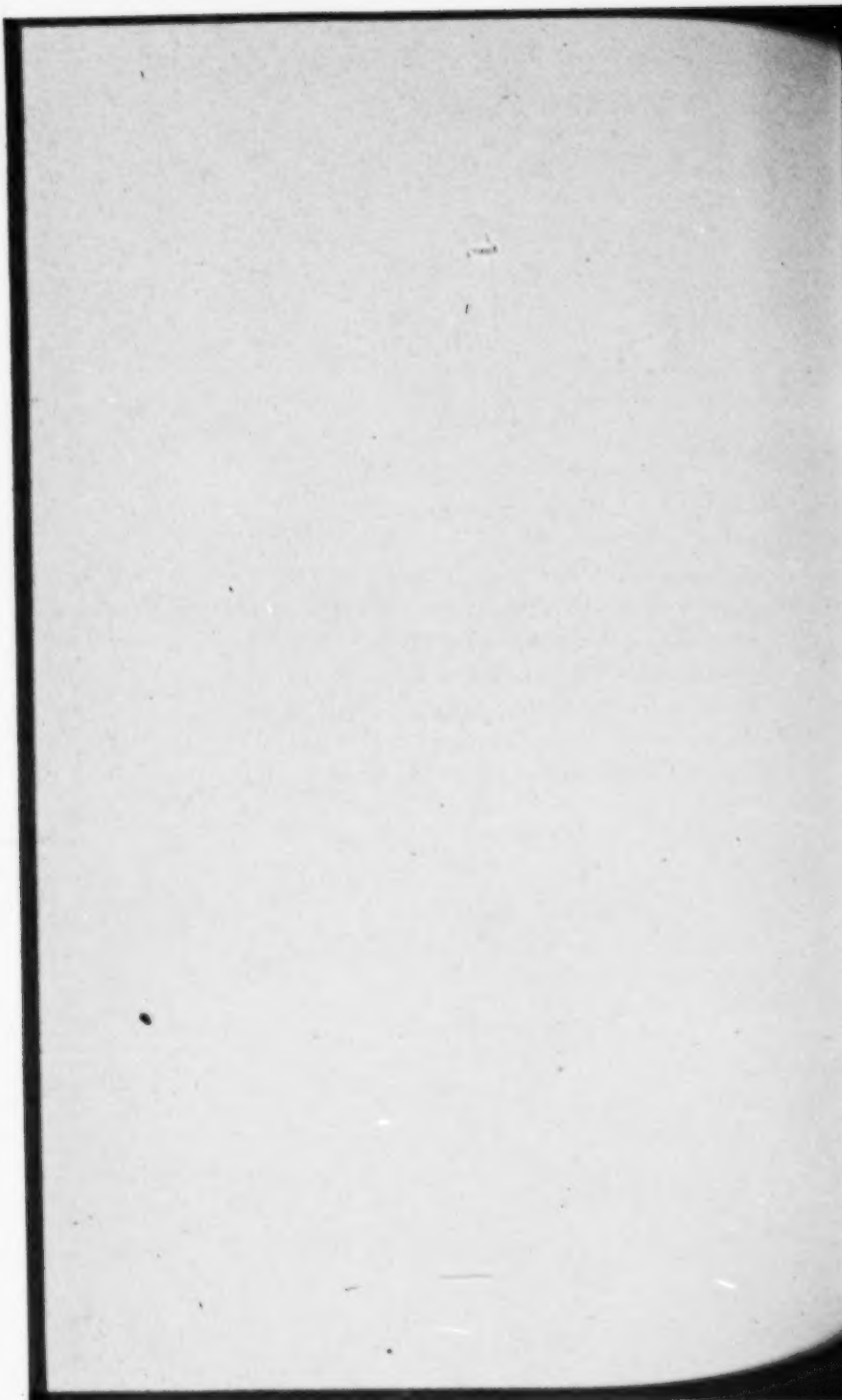

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ARGUMENT

Two points in the respondent's brief prompt this reply brief. One is the unwarranted assumption by respondent that petitioner in his petition (p-7) concedes that the jury was warranted in finding that he was the sole owner of the boat (Respondent's Brief p-7); the other point is the obvious fact that the Government has fallen into the same error as the Court of Appeals which decided the case upon its interpretation of a cold record instead of meeting the questions raised within the scope of the submission of the case to the jury by the District Court.

As to the first point, what petitioner said in his brief was:

> "However, when the defendant was interrogated several years afterwards by the revenue agents, he said

> he was the sole owner of the boat, and the finding of guilty by the jury necessarily implies that the jury found defendant was the sole owner and the case is now treated on that basis." (Petitioner's Brief p-7)

Petitioner did not concede, did not intend to concede, and does not now agree that the jury was warranted in finding that petitioner was the sole owner of the boat. Petitioner took the logical position that the jury could not have convicted him unless it found that he was the sole owner of the boat; that is very evident from the figures shown in respondent's brief on page 6, showing the difference in income to petitioner based on sole ownership and one-quarter ownership.

Without laboring the point, it is clear that the *corpus delicti* in this case is receipt of taxable income in excess of the amount reported by the petitioner, and an essential element of proof of part of this *corpus delicti* was the sole ownership of the "Natalie III". The trial court charged the jury that the finding of receipt of income could be inferred from a finding of sole ownership of the boat. Therefore, it is important to determine if there was evidence from which, under proper instructions from the court, the jury could find the petitioner to be the sole owner.

The Custom House registration of the "Natalie III" in the City of Gloucester (Exhibit A) shows that Anthony Linquata, the petitioner, as managing owner held a one-quarter interest in the boat. (R-42) Tax receipts of the City of Gloucester for the years 1942, 1943, and 1944 (Exhibit B) were to the same effect as regards ownership of the boat. (R-78, 81) Thomas J. Linquata, whom the same records showed to be a one-quarter owner of the boat, testified that this was the truth and that the defendant was

a one-quarter owner as well. (R-83) Margaret Lawson, a bookkeeper who took care of the check book (R-35) and other accounts of the "Natalie III" likewise testified that the boat was owned by three individuals and that the petitioner held only a one-quarter share. (R-34) The petitioner testified, in contradiction to the alleged admissions, that he was only a quarter owner. (R-83)

The evidence that the petitioner was the sole owner lies solely in admissions made by him to revenue agents who were making extended investigations of alleged income tax violations by Gloucester fishermen. The truth of these admissions, made subsequent to the time of the crimes charged in the indictment, are without corroboration of any kind in the evidence. On the contrary, as already noted, the direct evidence aside from the admissions was clearly to the effect that the petitioner owned only one-quarter of the boat.

The trial judge alluded in his charge to the admissions made by the petitioner to the revenue agents as to the ownership of the boat. He gave no weight to further admissions made by the petitioner to the revenue agents at the same time to the effect that he received the boat's share of the proceeds (the lack of corroboration was evidently apparent to the trial judge), yet the Court of Appeals was impressed by these admissions and rested its decision thereon. In so doing, the Court of Appeals disregarded the case as it was actually sent to the jury both in terms of the law stated to the jury and the evidence as there summarized.

Both sorts of admissions—as to ownership and as to receipt of income—stand upon the same basis. Both lack any shadow of corroboration, as is required by applicable rules clearly stated by the Supreme Court and numerous Courts of Appeal. There was no corroboration of the fact of sole

ownership. The sole basis presented was admissions whose truth the petitioner denied; hence there was no basis to infer receipt—assuming that an inference of receipt could be made from a finding of ownership—for the inference of receipt lacked foundation because sole ownership could not be established. The truth of admissions as to the receipt of the entire proceeds of the various catches was also denied by the petitioner at the trial (R-84); hence these admissions could not provide the basis of a finding of receipt of income without corroboration. And there is no such corroboration as clearly appears from the judge's charge (R-96) and from the opinion of the Court of Appeals itself. (R-112) So, also, the failure of each admission to provide a basis for an inference of receipt of income cannot be cured by using each admission to supply the defect in the other. There being no basis in adequate evidence to take the question of sole ownership to the jury, and likewise no basis to take the issue of receipt of income to the jury, the judgment of acquittal should properly have been directed for the petitioner. Even the finding of ownership of the boat without the finding of actual receipt is not sufficient to sustain the conviction because there is no room left for the government to argue any doctrine of constructive receipt of income; and even the Court of Appeals expressly refused to consider this in its opinion. (R-113)

That there must be a strict corroboration of a confession or an admission embracing the pertinent elements of the *corpus delicti* has been declared by the Supreme Court. *Warszower* v. *United States*, 312 U.S. 342. This long recognized principle of criminal jurisprudence protects against the danger of untrue admissions and confessions. The rule is succinctly stated by a Court of Appeals in a case involving admission:

"In summary it may be stated that the rule in this country in all federal courts which have considered the question, has universally been that an extra-judicial confession will not be admitted unless corroborated by other evidence."

Tabor v. *United States*, 152 F.2d 254 (C.A. 4)

In the case at bar, the receipt of income is an essential element to be proved by the Government. The admission as to receipt cannot be corroborated by an admission as to ownership, yet the only theory presented to the jury to allow a conviction rests on an inference of receipt from ownership. The very presentation of such a theory admits of a lack of adequate corroboration of the admission as to actual receipt. In fact, there was none. There certainly was no "substantial evidence of the *corpus delicti* and the whole thereof".

Forte v. *United States*, 94 F.2d 236 (C.A. D.C.)
Yost v. *United States*, 157 F.2d 147 (C.A. 4)

The other point petitioner wishes to stress is the serious neglect by the Court of Appeals of the case as actually sent to the jury under the charge of the Trial Court and its decision of guilt or innocence based upon its reading of a cold record. The result is in direct conflict with the holding of the Supreme Court.

Bollenbach v. *United States*, 326 U.S. 607

It was there held:

"It is not to be supposed that Congress intended to substitute the belief of appellate judges in the guilt of

> the accused, however justifiably engendered by the dead record, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be." (p-615)

On the element of receipt the trial court did not speak of any admission and in fact stated:

> "So you have no direct evidence that Anthony Linquata received cash except perhaps the cash he received as a captain and a member of the crew, but you may make such inferences from the surrounding circumstances as a reasonable man would make." (R-96)

Admissions made to revenue officers several years after the years here in question clearly could not be included in a jury's understanding of surrounding circumstances. As to ownership, the only circumstance existent and the one on which the case rested, the court charged:

> "Now if you should decide that he was the sole owner of the boat, you would have sufficient evidence, it seems to me to conclude that he was not only the owner but that he actually received the money." (R-99)

This is one of the errors of law on which the petitioner was convicted but the Court of Appeals has not seen fit to review the conviction even on that basis. Instead, it searched the record to find evidence, i.e. the admissions to the revenue agents which it says adequately demonstrate the guilt of the defendant. The charge to the jury on this point of ownership, which the Court of Appeals "did not pause to consider" (R-113), is at best equivocal; to the petitioner it appears to be plainly wrong. Unless the theory of this

charge is correct and is so held by the Appellate Court to be unequivocal, and the Appellate Court can honestly say that the jury understood it meant to include not only ownership of the boat but all other evidence in the case, whatever that evidence may be, then this petitioner has not been given the fair trial by jury that our judicial system demands.

The jury must be conclusively presumed to have found this petitioner guilty after applying this charge to the evidence presented. The effect of the charge upon the jury in setting up a basis in ownership for the inference of receipt of income was crucial, and if no such inference can properly be made, as petitioner asserts, such substantial error cannot be disregarded as harmless.

Krulewitch v. *United States*, 69 S. Ct. 716

The inquiry cannot be, as the Court of Appeals erroneously believed, whether there was enough to support the verdict on a different theory of law aside from the theory in fact presented to the jury. If there is "grave doubt" that error had a "substantial influence" upon the verdict the judgment must be reversed. Here there is not "grave doubt" but certainty that the error had "substantial influence" for common sense negates the idea that a jury of laymen disregarded the charge of the trial court and on its own initiative constructed a theory for conviction first enunciated by the Court of Appeals.

Kotteakos v. *United States*, 328 U.S. 750, 765

That a jury could have been charged in an unequivocal manner to properly justify a conviction in this case does not alter the fact that an injustice has been done to this petitioner.

Bollenbach v. *United States*, 326 U.S. 607

The position of this petitioner is stated in the words of that opinion:

> "It may not be amiss to remind that the question is not whether guilt may be spelt out of a record, but whether guilt has been found by a jury according to the procedures and standards appropriate for criminal trials in the federal courts." (p-614)

Respectfully submitted,

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